

## **NOTICE OF PUBLIC HEARING**

**Wednesday, February 20, 2008**

**9:30 A.M. – 12:00 P.M.**

**Kneip Building  
Conference Room #3  
700 Governor's Drive  
Pierre, SD**

### **INTRODUCTION**

On February 20, 2008, the United States Department of Education (“the Department”) will conduct a public hearing, pursuant to the requirements of Section 457 of the General Education Provisions Act (“GEPA”), 20 U.S.C. § 1234f, to determine whether it should enter into a compliance agreement with the South Dakota Department of Education (“SDDE”). Under such an agreement, SDDE would continue to receive funds under Title I, Part A of the Elementary and Secondary Education Act of 1965 (“Title I”), as amended by the No Child Left Behind Act of 2001 (“NCLB”), while it takes steps to come into compliance with the requirements of that statute. The following two sections of this Notice explain why the Department is considering entering into a compliance agreement with SDDE and the specific purpose of the hearing.

### **BACKGROUND**

Title I, as amended by NCLB, provides financial assistance to local educational agencies and schools with high numbers or percentages of poor children for supplemental education services to help ensure that all children meet challenging state academic standards. Among other things, Title I requires States receiving Title I funds to implement a statewide standards and assessment system that meets certain requirements.

Each State was required to adopt academic content and achievement standards in at least mathematics, reading/language arts, and, beginning in the 2005-2006 school year, science. These standards must include the same knowledge and levels of achievement expected of all public school students in the State. Content standards must specify what the State expects all students to know and be able to do; contain coherent and rigorous content; and encourage the teaching of advanced skills. Achievement standards must be aligned with the State’s content standards and must describe at least three levels of proficiency to determine how well students in each grade are mastering the content standards. A State must provide descriptions of the competencies associated with each achievement level and must determine the assessment scores (“cut scores”) that differentiate among the achievement levels.

Each State was also required to implement an assessment system to evaluate whether students are mastering the subject material reflected in the State’s academic standards. By the 2005-2006 school year, States were required to administer mathematics and

reading/language arts assessments yearly during grades 3-8 and once during grades 10-12. Further, beginning with the 2007-2008 school year, each State is required to administer a science assessment in at least one grade in each of the following grade spans: 3-5, 6-9, and 10-12. A State's assessment system must:

- Be the same assessment system used to measure the achievement of all public school students in the State;
- Be designed to provide coherent information about student attainment of State standards across grades and subjects;
- Provide for the inclusion of all students in the grades assessed, including students with disabilities and limited-English-proficient (LEP) students;
- Be aligned with the State's content and achievement standards;
- Express student results in terms of the State's student achievement standards;
- Be valid, reliable, and of adequate technical quality for the purpose for which it is used and be consistent with nationally recognized professional and technical standards;
- Involve multiple measures of student academic achievement, including measures that assess higher order thinking skills and understanding of challenging content;
- Objectively measure academic achievement, knowledge, and skills without evaluating or assessing personal family beliefs and attitudes;
- Enable results to be disaggregated by gender, each major racial and ethnic group, migrant status, English proficiency status, students with disabilities, and economically disadvantaged students;
- Provide individual student reports; and
- Enable itemized score analyses.

In addition to a general assessment, States were required to develop at least one alternate assessment for students with disabilities who cannot participate in the general assessment, even with appropriate accommodations. An alternate assessment may be based on grade-level achievement standards, alternate achievement standards, or modified achievement standards.

SDDE failed to timely meet certain of the requirements for its general assessment (South Dakota State Test of Educational Progress, or "STEP") and alternate assessment based on alternate academic achievement standards (South Dakota State Test of Educational Progress-Alternate, or "STEP-A"). Specifically, SDDE failed to demonstrate that the STEP and STEP-A are valid, reliable, and of adequate technical quality for the purpose for which they are used and that both assessments are aligned to South Dakota's grade-level academic content standards.

SDDE has been working to modify its assessment system to meet these Title I requirements. Due to the complexity of the task, SDDE was not able to complete the necessary changes by the statutory deadline. As a result, SDDE is not in full compliance with the Title I requirements.

The Department has several actions that it can take when a grantee is not in compliance with Title I. These options include withholding Title I funds, issuing a cease and desist order, or entering into a compliance agreement, whereby the grantee agrees to come into full compliance by a future date. Pending the outcome of the February 20, 2008 hearing, the Department believes a compliance agreement – rather than another, more punitive remedy – can be an appropriate vehicle to bring SDDE into full compliance with Title I.

Under a compliance agreement, SDDE would have no more than three years to bring its general assessment and alternate assessment into full compliance with Title I. During this period, SDDE would continue to receive Title I funds from the Department as long as it demonstrates reasonable, consistent progress toward the goal of full compliance with Title I. To that end, the compliance agreement would contain a detailed plan and specific timeline for how SDDE would accomplish the steps necessary to achieve compliance. Under Section 457(d) of GEPA, if a compliance agreement is executed and SDDE fails to comply with its terms and conditions, the Department could determine that the agreement is no longer in effect and take any steps authorized by law, including the withholding of Title I funds. “[T]he purpose of any compliance agreement...shall be to bring the recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements.” 20 U.S.C. § 1234f(a).

### **PURPOSE OF HEARING**

Under GEPA, before entering into a compliance agreement, the Department is required to “hold a hearing at which the recipient [SDDE], affected students and parents, or their representatives, and other interested parties are invited to participate. The recipient [SDDE] shall have the burden of persuading the Secretary that full compliance with the applicable requirements of law is not feasible until a future date.” 20 U.S.C. § 1234f(b)(1).

Thus, the purpose of the hearing is to gather information that the Department will use in determining whether it is appropriate to enter into a compliance agreement with SDDE. The testimony of witnesses in attendance at the hearing will be strictly limited to the following two questions:

- (1) Whether full compliance by SDDE with the standards and assessment requirements of Title I “is not feasible until a future date.”
- (2) Whether SDDE will be able to come into full compliance with the above requirements within a period of three years.

The parties will have the opportunity to provide written and/or oral testimony to Department officials on these two issues only. The testimony will help the Department to determine whether a compliance agreement is an appropriate means of ensuring that SDDE completes its ongoing efforts to meet the Title I requirements regarding its standards and assessment system.

Hearing participants may register to provide oral and/or written testimony upon their arrival at the hearing, beginning at 9:30 A.M. The hearing will begin no later than 10:00 A.M. The speaking time for oral testimony will be limited based on the number of participants who register at the hearing. Testimony will be strictly limited to statements regarding the two questions listed above. Parties may also submit written comments by mail, email or fax no later than Monday, March 3, 2008 to:

Courtney Merritt  
U.S. Department of Education  
Office of Elementary and Secondary Education  
400 Maryland Avenue, SW  
Room # 3W319  
Washington, DC 20202  
Email: [courtney.merritt@ed.gov](mailto:courtney.merritt@ed.gov)  
Fax: (202) 205-0303

Parties who have questions about the scope of the hearing should contact Courtney Merritt by email or fax, or the Office of Curriculum, Technology, and Assessment of the South Dakota Department of Education at (605) 773-3783. Please be advised that all testimony may be subject to disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place with handicapped parking available. Please notify the Office of Curriculum, Technology, and Assessment within two weeks of the hearing if you have special needs for which this agency will need to make arrangements. The telephone number for making special arrangements is (605) 773-3783.